IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24492 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
AND
HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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M/S GHELA RAMA & COMPANY THRO'POWER OF ATTORNEY - Petitioner(s)
Versus
STATE OF GUJARAT THRO'SECRETARY & 3 - Respondent(s)

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Appearance :
MS SEJAL K MANDAVIA for Petitioner(s) : 1,
MR SATYAM CHHAYA, AGP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 13/07/2007
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

RULE. Mr. Satyam Chhaya, learned Assistant Government Pleader waives service respondent Nos.1 to 3. In the facts and circumstances of the case, the petition is taken up for final disposal today. It is not necessary to issue notice of Rule to respondent No.4.

2. What is challenged in this petition under Article 226 of the Constitution is the order dated 27.06.2006 (Annexure-A to the petition) passed by the Executive Engineer, Roads and Buildings Department, Amreli cancelling the contract in question, forfeiting the deposit and cancelling the petitioner's registration for a period of three years.

3. The petitioner has urged several grounds in the memo of petition and Ms. Sejal K. Mandavia, learned advocate for the petitioner sought to assail the order on the basis of all such grounds. It is, however, not necessary to enumerate those grounds or to refer to the reply given by the respondent authorities because we propose to allow this petition on a short ground.

4. In response to the show cause notice dated 08.06.2006

(Annexure-G to the petition), the petitioner gave its reply dated 19.06.2006 (Annexure-H to the petition). The fact that the petitioner gave such reply dated 19.06.2006 (Annexure-H to the petition) is not at all disputed by the respondents. On the contrary, the receipt of the said reply is very much admitted in Para 5.7 of the reply affidavit. The impugned order dated 27.06.2006, however, does not make any reference to the said reply, nor does it give any indication that the concerned authority applied its mind to the reply dated 19.06.2006. The impugned order cancels the contract in question, forfeits the deposit, provides for recovery of liquidated damages and also cancels the petitioner's registration for a period of three years for which the notice was given. Looking to the contents of the final order also, there is no indication that the concerned authority had applied its mind to the defences urged by the petitioner in the reply dated 19.06.2006.

5. Mr. Chhaya, learned Assistant Government Pleader for the respondent authorities, however, submits that since the affidavit-in-reply is filed on merits and deals with the grounds raised by the petitioner in the memo of petition, the impugned order may not be interfered with.

6. In the facts and circumstances of the case, we are of the view that if the respondent authorities had given an opportunity of personal hearing to the petitioner and thereafter considered the petitioner's defences and dealt with the same in the impugned order (even briefly), it would have shown that the authority had applied its mind before passing the final order. Even if the defences urged by the petitioner may not be wholly acceptable to the authority, while imposing the penalty such defences would be relevant and lesser penalty may be imposed, if there is some substance in the reply, even if the defence may not be sufficient to discharge the show cause notice.

7. In view of the above, we set aside the impugned order dated 27.06.2006 (Annexure-A to the petition), but permit the respondent authorities to decide the matter afresh after considering the petitioner's reply dated 19.06.2006 (Annexure-A to the petition) and after giving the petitioner an opportunity of personal hearing at which also, it will be open to the petitioner to submit any additional reply. It appears that the petitioner had also submitted various representations after the impugned order was passed on

27.06.2006. In order to ensure that the petitioner submits a consolidated reply instead of such piecemeal representations, the petitioner may submit such a consolidated reply before the date of hearing before the concerned authority. In fact the authority may fix the date of hearing after giving at least 15 days advance notice so that the petitioner can file his additional or consolidated reply one week in advance, which would also give the authority enough time to get instructions from the concerned subordinate authority.

8. The petition is accordingly allowed. The impugned order dated 27.06.2006 (Annexure-A to this petition) is set aside with a direction to the respondent authorities to decide the matter afresh after giving the petitioner an opportunity of hearing including the opportunity to file additional reply as indicated above.

It is clarified that we have not gone into the merits of the controversies raised in this petition.

Rule is made absolute accordingly.

[M.S.SHAH, J.] [K.A.PUJ, J.]

mrpandya*